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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Air Control Science, Inc.

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Serial No. 74/590,809

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E. Michael Byorick of Duft, Graziano & Forest, P.C. for Air Control Science, Inc.

Susan K. Leslie, Trademark Examining Attorney, Law Office 104 (Sidney Moskowitz, Managing Attorney).

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Before Simms, Hanak and Hairston, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Air Control Science, Inc. to register the mark DUST ANALYST for "analysis, design and engineering of dust collection systems for others."<sup>1</sup>

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's services, the mark is merely descriptive of them.

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<sup>1</sup>Application Serial No. 74/590,809 filed October 26, 1994; alleging dates of first use of October 25, 1994.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

The Examining Attorney maintains that when the words "dust" and "analyst" are combined, the resulting term DUST ANALYST conveys information regarding the nature of applicant's services, namely, that applicant's services involve "the analysis of dust itself, or the analysis of the method of removing dust." Final office action, p. 2. In support of her position, the Examining Attorney has submitted dictionary definitions of the terms "dust" and "analyst." In Webster's Ninth New Collegiate Dictionary (1990) "dust" is defined, inter alia, as "fine dry particles of earth or pulverized matter," and "to make free of dust"; and "analyst" is defined as "a person who analyzes or who is skilled in analysis."

Applicant, however, contends that the plain meaning of the term "dust analyst" is one who analyzes dust, that applicant's services do not involve the analysis of dust, and that DUST ANALYST only suggests something about what applicant does, but does not convey information about the specific nature of applicant's services.

A mark is considered to merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of the ingredients, qualities, characteristics or feature thereof or if it directly conveys information regarding the

nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 616 F.2d 525, 200 USPQ 215, 217-218 (CCPA 1978). Moreover, in order to be descriptive, the mark must immediately convey information as to the ingredients, qualities or characteristics of the goods or services with a "degree of particularity." *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-1205 (TTAB 1981); *Holiday Inns, Inc. v. Monolith Enterprises*, 212 USPQ 949, 952d (TTAB 1981); *In re TMS Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978); and *In re Diet Tabs, Inc.*, 231 USPQ 587, 588 (TTAB 1986).

There is no dispute, given the dictionary definitions of record, about the readily understood meanings of the individual words comprising the mark sought to be registered. We do not believe, however, that the combination of these words results in a term which is merely descriptive of the identified services, namely, the analysis, design and engineering of dust collection systems for others.

First, we find no support in this record for the Examining Attorney's position that DUST ANALYST is merely descriptive of applicant's services because it conveys to prospective purchasers that applicant's services involve the "analysis of dust itself." Applicant has identified its services as "analysis, design and engineering of dust collection systems for others." There is nothing in this record which indicates that such services involve the

analysis of dust, and in fact, applicant's attorney maintains that applicant's services do not include analysis of dust. We note in this regard that applicant's specimen of record--page 2 of a Proposal For Dust Collection Engineering Evaluation--provides little information about applicant's services. In particular, there is no indication from this one page that applicant's services involve the analysis of dust. We note that the Examining Attorney did not request that applicant submit the remaining pages of the specimen or, for that matter, any other informational literature concerning applicant's services and the activities applicant performs under this mark. See Trademark Rule 2.61 and TMEP Section 1105.02. Accordingly, in determining mere descriptiveness, we have relied upon uncontradicted representations made by applicant's attorney.

Second, the mark sought to be registered here is DUST ANALYST, not DUST COLLECTION SYSTEM ANALYST. We see a problem with reading the words "collection system" into this mark. Thus, this case is distinguishable from Abcor, supra, where the term GASBADGE was held merely descriptive of gas monitoring badges. Furthermore, we agree with applicant that the plain meaning of the term "dust analyst" is one who analyzes dust, not one who analyzes ways to remove dust. Prospective customers would have to pause and reflect on the significance of DUST ANALYST in order to understand that, as applied to applicant's services, the services include the analysis of dust collection systems or ways to remove dust.

In short, applicant's mark DUST ANALYST does not convey an immediate idea about applicant's services with any degree of particularity.

Based on the sparse record before us, we conclude that the mark DUST ANALYST, when used in connection with the analysis, design and engineering of dust collection systems for others, is not merely descriptive. To the extent that there is any doubt in this case, we have resolved that doubt in applicant's favor so as to permit publication of the mark.

**Decision:** The refusal to register under Section 2(e)(1) is reversed.

R. L. Simms

E. W. Hanak

P. T. Hairston  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board

**Ser No.** 75/590,809